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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/771,859	02/03/2004	David J. Domingues	PIL0009/US/2	3505	
33072 7590 .01/09/2008 KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082			EXAMINER		
			WONG, L	WONG, LESLIE A	
			ART UNIT	PAPER NUMBER	
	,		1794	<u> </u>	
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			01/09/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Exensions of time may be exhibited under the provisions of 37 CFR 1:360, in no event, nower, may a reply be timely filled. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (b) MONTHS from the maining date of this communication (Faller to reply within he set or exented period for reply will, by stanks, cause the application to become ABANDONE (30 U.S. C. § 133). Any reply received by the Office liter than three months after the mailing date of this communication, even if timely filled, may reduce any variety period will apply and will expire SIX (b) MONTHS from the mailing date of this communication. Even if timely filled, may reduce any variety reply received by the Office Item and pulment. Set 7 CFR 1:704(b). Status 1) Responsive to communication (S, filled on 17 October 2007. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-10-12-23 and 31-36 is/are rejected. 7) Claim(s) is/are allowed. 6) Claim(s) 1-10-12-23 and 31-36 is/are rejected. 7) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filled on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) A		Application No.	Applicant(s)				
Lessile Wong	Office Action Comment	10/771,859	DOMINGUES ET AL.				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address ¬ Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **Cameriose of interrary be available under the providers of 30° RT 1360°, in ne event, however, may a reply be triefy filled **If NO period for reply is specified above, the maximum statutory period will apply and the spire SIX (6) MONTHS from the mailing date of this communication. **Fallute to reply within the set or extended period for region 40° all policy will be provided by the provided by the provided of this communication. **Fallute to reply is specified above, the mailing date of this communication, even if timely filled, may reduce any sensed patent term adjustment. Set 97 CFR 1.7400. **Status** **Status** **Status** **Status** **Status** **Status** **Status** **Status** **Disposition of Sillution is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. **Disposition of Claims** **4)** **A)** Claim(s)	Oπice Action Summary	Examiner	Art Unit				
Period for Reply A SHORTENDE STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHE/VER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **INDEPENDENT OF THE MAILING DATE OF THIS COMMUNICATION.** **INDEPENDENT OF THIS COMMUNICATION.** **INDEPNDENT OF T							
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the proxison of 3° CFR 1.35(a). In ne event, however, may a reply be timely filed after 50 k (6) MORTHS from he mailing date of this communication. Failth to right within the set of centeded period for reply will, by stakins, cause he application to become ABANDCHOCH 30 th 3°C, 6°, 133). Any reply neceived by the Office later than three months after the mailing date of this communication, even if firmely filed, may reduce any seamed patient town adjustment. Sea 3° CFR 1.74(b). Status 1) □ Responsive to communication (s) filed on 17 October 2007. 2a) □ This action is FINAL. 2b) □ This action is not final. 3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) □ Claim(s) 1-10.12-23 and 31-36 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) □ Claim(s) is/are allowed. 6) □ Claim(s) is/are allowed. 6) □ Claim(s) is/are objected to. 8) □ Claim(s) are subject to restriction and/or election requirement. Application Papers 9) □ The specification is objected to by the Examiner. Application Papers 9) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner. Application papers holds and paper are subjected to be the day and an abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) sobjected to. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.85(a). 11) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 21) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 21) □ Acknow	The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
1) Responsive to communication(s) filed on 17 October 2007. 2a	 WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any 						
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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10, 12-23, and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutkins et al (US 5186962) in view of Franjione et al and Gaier (US 5645877).

Hutkins et al disclose a food product comprising an edible food item and a dormant, hydrated nontoxic lactic acid microorganism such as *Pediococcus*, wherein the nontoxic microorganism release by-products into the food product to inhibit the growth of harmful microorganism as is claimed (see entire patent, especially claims 1, 8, and 11). Hutkins et al also teach the food product to include meat and vegetable products and about 10³-10⁹ CFU cells bacteria per gram of food (column 11, lines 40-67).

The claims differ as to encapsulation and the specific use of *Streptoccocus* thermophilus.

Franjione et al disclose the use of encapsulation in food products for the purpose of shielding the active ingredient from the surrounding environment, wherein the core material is then released by different means such as mechanical rupture, dissolution, melting, diffusion, ablation, and biodegradation (see entire document, especially page

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1). Franjione et al also disclose conventional encapsulating materials including organic polymers (see page 2, fourth full paragraph)

Gaier teaches *Streptococcus thermophilus* as a lactic acid bacteria (see entire document, especially column 3, lines 39-50).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use encapsulation as taught by Franjione et al and to use
Streptococcus thermophilus as taught by Gaier in that of Hutkins because
Streptococcus thermophilus is a conventional lactic acid bacteria and encapsulation is
conventional in the food art. Applicant is using known components for their known
function to obtain no more than expected results.

Applicant's arguments with respect to claims 1-10, 12-23, and 31-36 have been considered but are most in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Leslie Wong Primary Examiner

eslie Wong

Art Unit 1794

LAW January 3, 2008